

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

CRL.A.No. 156 of 2002()

CC.1371/1998 of JUDL. MAGISTRATE OF FIRST CLASS-II, CHANGANACHERRY
MOBILE COURT, KOTTAYAM
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APPELLANT: COMPLAINANT

K.K. GEORGE, KURISUMKAL VEEDU,
PERUNNA KARA, CHANGANACHERRY.

BY ADV. SRI.ANIMON A. JOHN

RESPONDENTS: ACCUSED/STATE

1. SINDHU RADHAKRISHNAN,
W/O. P.R. RADHAKRISHNAN,
VRINDAVANAM VEEDU, VAZHAPPALLY KIZHAKU,
VAZHAPPALLY.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, OFFICE OF THE ADVOCATE
GENERAL, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 13/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.R.UDAYABHANU, J

Crl.A.No.156 of 2002

Dated this the 13th day of July, 2007

JUDGMENT

The appellant is the complainant in C.C.No.1371/98 with respect to the offence under Section 138 of the Negotiable Instruments Act.

2. The case of the complainant is that a sum of Rs.39,500/- was borrowed by the accused and issued the impugned cheque dated 30.5.1998 which when presented for encashment got dishonoured for want of funds in the account of the accused. Lawyer notice was served but there was no response.

3. The evidence adduced in the matter consisted the testimony of PW1 and Exts. P1 to P8. The defence got marked Exts. D1 and D2. The case set up by the defence is that the husband of the accused had a monetary transaction with the complainant and the impugned cheque was issued as security towards the above transaction.

4. The trial court dismissed the complaint and acquitted the accused as it appeared that the case set by the defence appeared to be more probable. It is on the basis of Exts. D1 and

D2 lawyer notices issued by the complainant to the husband of the accused that the court found that it is probable that Ext. P1 cheque was issued as security for the above transactions of her husband. It was also noted that the accused could not mention the place of residence of the accused although the case set up in the complaint is that the cheque was given from the residence of the accused. It is evident from the re-examination of PW1 that the accused changed her residence subsequently and it was hence that PW1 has mentioned that he is not aware of the place of residence of the accused. It is also pointed out that the execution of the cheque stands proved and that there is no case that it was a blank cheque that was issued.

5. On a perusal of evidence adduced, I find that the matter requires reconsideration. The case is remitted back to the trial court for fresh disposal after permitting the parties to adduce further evidence if so they desire and untrammelled by any observations contained in this order. The parties shall appear before the court below on 20.8.2007.

The appeal is disposed of accordingly.

**K.R.UDAYABHANU,
JUDGE**

csl